



# **Alienage & Citizenship**

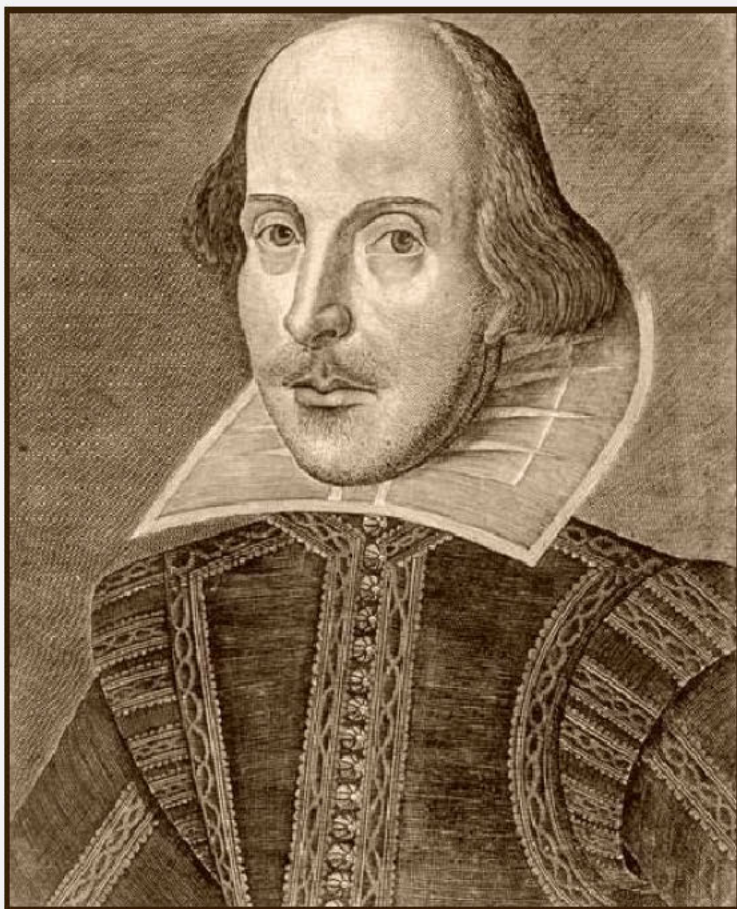
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Legal Training Program



## **Alienage & Citizenship**

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*USC or Not USC:  
That is the Question*

*Alienage &  
Citizenship in  
Immigration  
Proceedings*

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*After this session you will be able to:*

- 1. Explain the Importance of citizenship determinations.*
- 2. Identify presence of a possible citizenship issue.*
- 3. Identify resources to assist in resolving citizenship issues.*

**Goals**



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**You be the  
detective.**





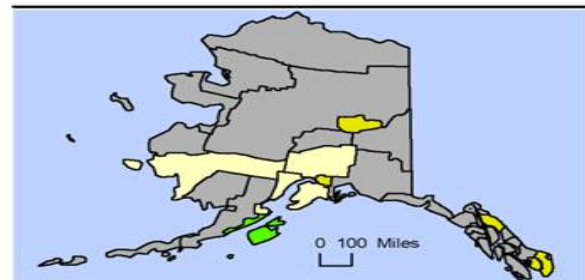
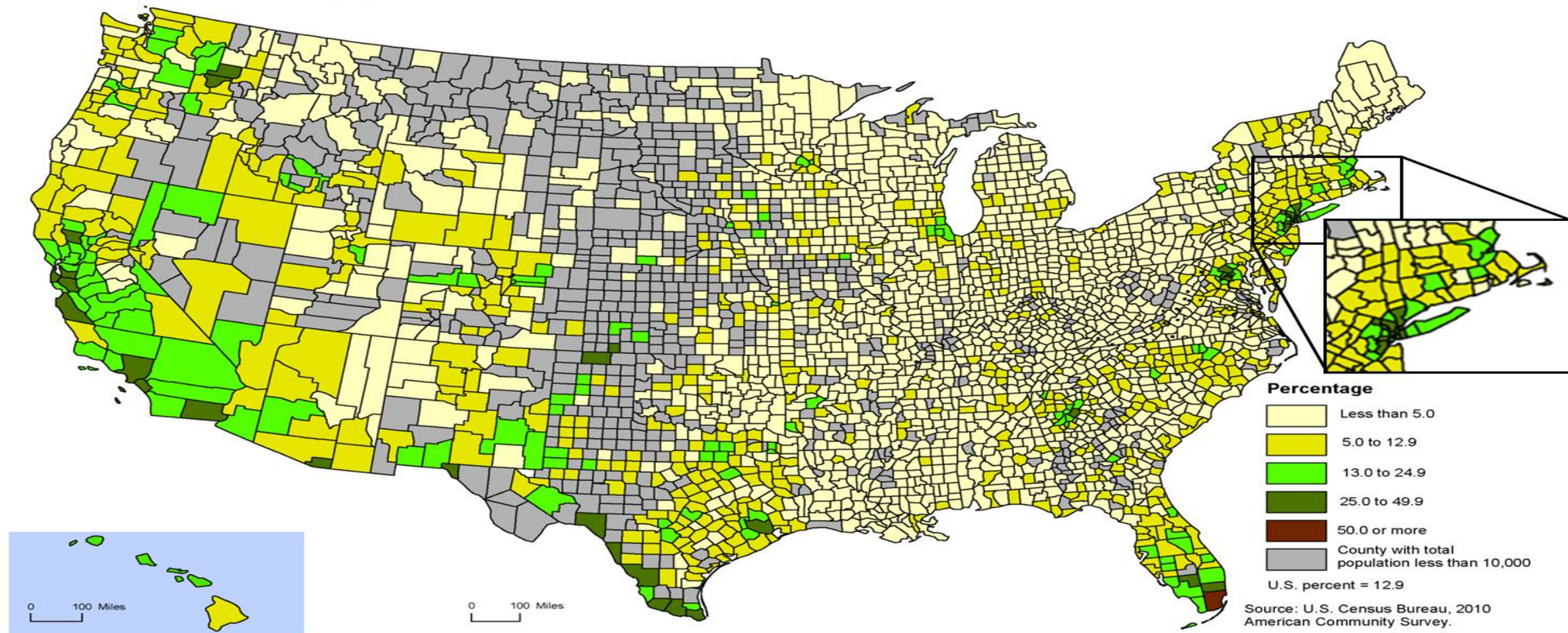


Figure 13.

## Foreign-Born Population as Percent of County Population: 2010

(Data based on sample. For information on confidentiality protection, sampling error, and definitions, see [www.census.gov/acs/www](http://www.census.gov/acs/www))







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**Birth abroad gives  
rise to a  
presumption of  
alienage.**

***Matter of Tijerina-Villarreal, 13  
I&N Dec. 327, 330 (BIA 1969).***

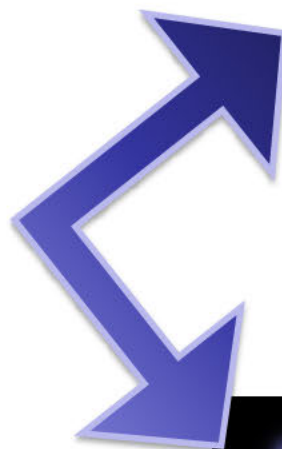


***The ball is in your court.***



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**Citizenship  
Through  
One's  
Parents**



**Acquired  
at Birth**



**Derived  
Through  
Naturalization**



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## B.A.N.D. Approach

**B**irth in U.S.

**A**cquired at Birth

**N**aturalization

**D**erived thru Naturalization

1. Determine where & when the respondent was born.
2. Determine whether one or both of the child's parents were U.S. citizens at time of birth.
3. Determine the applicable law. (CCPA?)
4. If the child had only one USC parent, determine whether the parent had sufficient residence or physical presence in the U.S. prior to the child's birth to convey U.S. citizenship on the child.
5. Determine if one or both parent naturalized while child = LPR.





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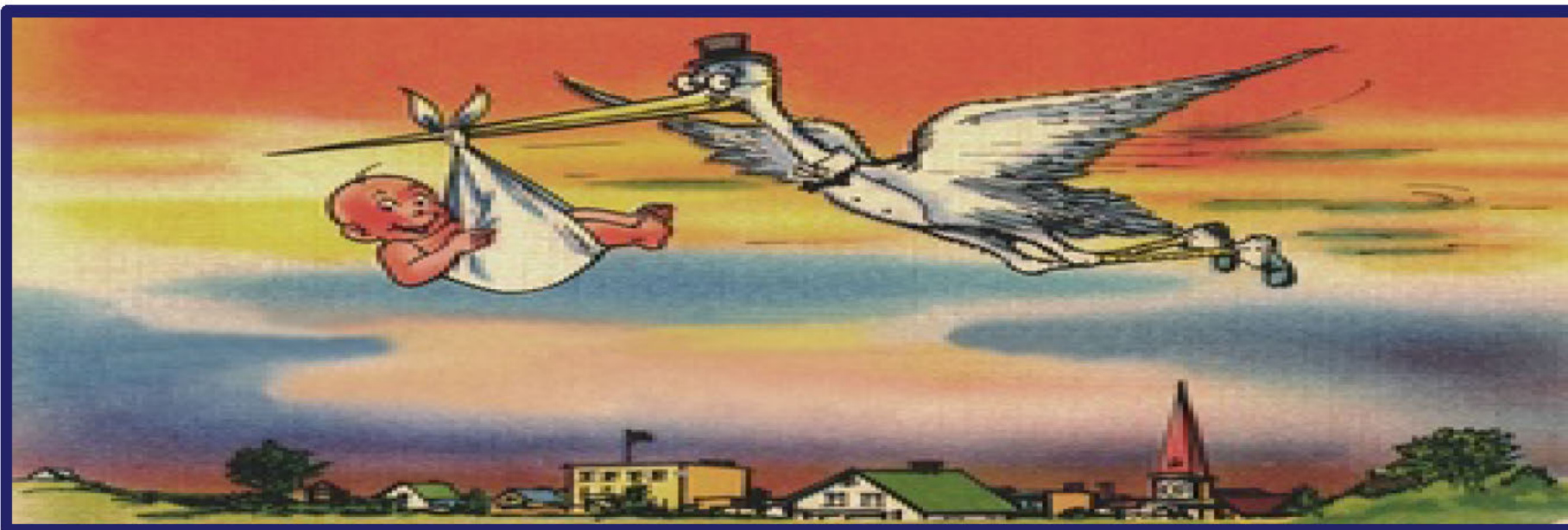
(b) (6)

***What is his  
immigration  
status?***



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## **First Question:**



***Was the respondent born in the  
United States?***

**B.A.N.D.**





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(b) (6)



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**Second Question:**  
  
***Was one or both of  
the respondent's  
parents USCs at time  
of birth?***

(b) (6)

**B.A.N.D.**





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# **Citizenship Acquired at Birth**

A child born abroad to a U.S. citizen parent automatically acquires citizenship at birth if the citizen parent resided in the United States during the statutorily required period of time prior to the birth of the child.

The statutory time period required for a child to acquire U.S. citizenship at birth is determined by the date of the child's birth.

***B.A.N.D.***



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# ***Determine the Applicable law***

**INA § 301(g)**- Sets forth the general criteria for acquisition of U.S. citizenship at the time of birth for persons born abroad to one USC parent and one non-USC parent

**Child born on or after 11/14/1986**- USC parent was a citizen at time of the child's birth and was physically present in US/possessions for a period of 5 yrs., at least 2 yrs. After turning 14 yrs. old.

**Child born before 11/14/1986**- USC parent was physically present for a period of 10 yrs., at least 5 of which were after turning 14 yrs. old.

**B.A.N.D.**





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(b) (6)

**Third Question:**  
***Did the  
respondent  
naturalize when  
he was an  
LPR?***

**B.A.N.D.**



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### **Fourth Question:** ***Did the respondent derive thru naturalization?***



Both parents, the surviving parent, or the parent having custody after a legal separation naturalizes before the permanent resident alien child turns eighteen.

**B.A.N.D.**



### ***Derivative Citizenship of Children***

A child may derive U.S. citizenship during the below listed historical periods if such child was under the statutory age, AND the child became a lawful permanent residence (LPR), AND the parent(s) naturalized. It does not matter in which order the actions occurred.

PERIOD IN WHICH LAST ACTION TOOK PLACE	CHILD BECAME LPR BEFORE STATUTORY AGE OF	NATURALIZATION OF PARENT(S) PRIOR TO CHILD'S STATUTORY AGE	ADDITIONAL REMARKS
<i>Prior To</i> <b>May 24, 1934</b>	21 years old	At least one parent naturalized	None
<i>On or After</i> <b>May 24, 1934</b> <i>and Prior To</i> <b>Jan. 13, 1941</b>	21 years old	At least one parent naturalized	U.S. citizenship effective 5 years from date child becomes an LPR
	21 years old	Both parents naturalized	None
<i>On or After</i> <b>Jan. 13, 1941</b> <i>and Prior To</i> <b>Dec. 24, 1952</b>	18 years old	Both parents naturalized	Child born out of wedlock derived on Dec. 24, 1952 if under age 16 and had remained an LPR
<i>On or After</i> <b>Dec. 24, 1952</b> <i>and Prior To</i> <b>Oct. 5, 1978</b>	18 years old	Both parents naturalized	Child unmarried (does not include adopted children, but adopted children may derive through the naturalization of their biological parent(s) after adoption if all other requirements are met)
<i>On or After</i> <b>Oct. 5, 1978</b> <i>and Prior To</i> <b>Feb. 27, 2001</b>	18 years old	Both parents naturalized	Child unmarried (includes child adopted before age 16 who is residing with adoptive parent(s) at the time of their naturalization)
<i>On or After</i> <b>Feb. 27, 2001</b>	18 years old	At least one parent is a U.S. citizen by birth or naturalization	Child resides in the United States in legal and physical custody of U.S. citizen parent (includes adopted child of U.S. citizen; must meet INA 101(b)(1) requirements for adopted children)



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***If a child is born to two  
U.S. citizen parents,  
the child is a U.S.  
citizen provided one  
parent resided in the  
United States prior to  
the child's birth.***

**Children Born to Two USC Parents**

**Children of U.S. Citizens Regularly Residing  
Outside the United States (INA § 322)**

GENERAL REQUIREMENTS	PHYSICAL PRESENCE OF PARENT OR GRANDPARENT
<ul style="list-style-type: none"><li>•Must meet the definition of child under <a href="#">INA 101(c)(1)</a>.</li><li>•The child has at least one U.S. citizen (USC) parent by birth or through naturalization (including an adoptive parent). An adoptive parent must meet the requirements of <a href="#">INA 101(b)(1)(E)</a>, <a href="#">INA 101(b)(1)(F)</a>, or <a href="#">INA 101(b)(1)(G)</a>.</li><li>•The child’s USC parent or USC grandparent meets physical presence requirements.</li><li>•The child is under 18 years of age (at the time of adjudication and the taking of the Oath of Allegiance unless the Oath is waived because the child is unable to understand its meaning by reason of mental incapacity or young age).</li><li>•The child is residing outside of the United States in the legal and physical custody of the USC parent, or a person who does not object to the application if the USC parent is deceased.</li><li>•At the time the application is approved and time of naturalization, the child is lawfully admitted, physically present, and maintaining a lawful status in the United States. Both the child and the citizen parent must appear at an interview.</li></ul> <p><b>Children of Military Members</b> For children of military members authorized to accompany the member abroad and residing with the military member parent:</p> <ul style="list-style-type: none"><li>•The parent’s authorized period abroad counts as physical presence in the United States;</li><li>•The child does not need to reside in the United States in lawful status; and</li><li>•The child may take the Oath abroad.</li></ul> <p><b>U.S. Citizen Grandparent or Legal Guardian Filing on Behalf of Child</b> If the USC parent has died, the child’s USC grandparent or USC legal guardian may file on the child’s behalf within 5 years of the USC parent’s death.</p>	<p><b>U.S. Citizen Parent</b> USC parent was physically present in the United States or its outlying possessions for at least 5 years (at least 2 years of which were after age 14)</p> <p><b>OR</b></p> <p><b>U.S. Citizen Grandparent</b> If the USC parent has died, the USC parent must have met the physical presence requirement stated above at time of death. If the child’s USC parent does not meet the requirement, the child may rely on the physical presence of the child’s USC grandparent (at least 5 years, at least 2 years of which were after age 14), provided the grandparent meets the requirement as of the USC parent’s time of death.</p>





## **Alienage & Citizenship**

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### ***Section 309***

**Rules for obtaining citizenship  
through a parent vary depending  
on whether the child is born:**

- **In or out of wedlock.**
- **To a U.S. citizen mother or father.**



***INA § 309***

Children Born Outside the United States in Wedlock			
<b>PERIOD IN WHICH CHILD WAS BORN</b> <i>STEP 1: Determine period in which child was born</i>	<b>CITIZENSHIP OF PARENTS AT TIME OF CHILD’S BIRTH</b> <i>STEP 2: Determine parents’ citizenship at time of child’s birth</i>	<b>PARENTS’ RESIDENCE &amp; PHYSICAL PRESENCE PRIOR TO CHILD’S BIRTH</b> <i>STEP 3: Did U.S. citizen (USC) parent meet residence or physical presence requirement prior to birth? (If yes, child was a USC at birth)</i>	<b>CHILD’S RETENTION REQUIREMENT</b> <i>STEP 4: Did child meet retention requirement (if any)? (Child lost citizenship on date it became impossible to meet requirement)</i>
Prior to <b>May 24, 1934</b>	Either parent a USC	USC parent resided in the U.S.	Not Applicable
On or After <b>May 24, 1934</b>  <i>and Prior To Jan. 13, 1941</i>	Both parents USCs	At least one USC parent resided in the U.S.	Not Applicable
	One USC parent and one alien parent	USC parent resided in the U.S.	5 years residence in the U.S. or Outlying Possession (OLP) between ages 13 and 21 (must start before age 16) <b>OR</b> 5 years continuous physical presence in the U.S. between ages 14 and 28 (must start before age 23) <b>OR</b> 2 years continuous physical presence in the U.S. between ages 14 and 28 (must start before age 26) <b>OR</b> Exempt, if at time of child's birth, USC parent was employed by U.S. government or specified organization
On or After <b>Jan. 13, 1941</b>  <i>and Prior To Dec. 24, 1952</i>	One USC parent and one alien parent	USC parent resided in U.S. or OLP for 10 years, at least 5 years of which were after age 16 Special provisions for parents with honorable service in the U.S. armed forces: (1) Between Dec. 7, 1941 and Dec. 31, 1946, 10 years of residence, at least 5 years of which were after age 12 (2) Between Jan. 1, 1947 and Dec. 24, 1952, 10 years of physical presence, at least 5 years of which were after age 14	5 years residence in the U.S. or OLP between ages 13 and 21 (must start before age 16) <b>OR</b> 5 years continuous physical presence in the U.S. between ages 14 and 28 (must start before age 23) <b>OR</b> 2 years continuous physical presence in the U.S. between ages 14 and 28 (must start before age 26) <b>OR</b> Exempt, if at time of child’s birth, USC parent was employed by U.S. government or specified organization (exemption does not apply if parent used a special provision in column 3)
	Both parents USCs	At least one USC parent resided in the U.S. or OLP	Not Applicable
On or After <b>Dec. 24, 1952</b>  <i>and Prior To Nov. 14, 1986</i>	Both parents USCs	At least one USC parent resided in the U.S. or OLP	Not Applicable
On or After <b>Nov. 14, 1986</b>	One USC parent and one alien parent	USC parent physically present in the U.S. or OLP for 10 years, at least 5 years of which were after age 14	Not Applicable
	Both parents USCs	At least one USC parent resided in the U.S. or OLP	Not Applicable
	One USC parent and one alien parent	USC parent physically present in the U.S. or OLP for 5 years, at least 2 years of which were after age 14	Not Applicable

Child Born Out of Wedlock to U.S. Citizen Mother		Child Born Out of Wedlock to U.S. Citizen Father and Alien Mother <i>Child Legitimated by Father</i>	
Period in which Child was Born	Eligibility Requirements	Period in which Child was Born	Eligibility Requirements
<i>Prior To May 24, 1934</i>	The child was born an alien. <b>HOWEVER</b> , the child became a U.S. citizen (USC) retroactively to birth, effective on Jan. 13, 1941, if the child’s mother resided in the United States or Outlying Possession (OLP) prior to the child’s birth, <b>UNLESS</b> the child was legitimated by the alien father prior to Jan. 13, 1941.	<i>Prior To May 24, 1934</i>	<ul style="list-style-type: none"> <li>•The child was legitimated at any time after birth under the laws of the father’s domicile;</li> </ul>
<i>On or After May 24, 1934 and Prior To Dec. 24, 1952</i>	The mother resided in the United States or OLP at any time prior to the child’s birth.		<ul style="list-style-type: none"> <li>•The USC father resided in the United States prior to the child’s birth; and</li> <li>•No residence required for the child to retain U.S. citizenship.</li> </ul>
<i>On or After Dec. 24, 1952 and Prior To June 12, 2017</i>	The mother maintained at least 1 year of continuous physical presence in the United States or OLP at any time prior to the child’s birth.	<i>On or After May 24, 1934 and Prior To Jan. 13, 1941</i>	<ul style="list-style-type: none"> <li>•The child was legitimated at any time after birth under the laws of the father’s domicile;</li> <li>•The USC father resided in the United States prior to the child’s birth; and</li> <li>•The child met retention requirements.</li> </ul>
<i>On or After June 12, 2017</i>	The mother was physically present in the United States or OLP for at least 5 years prior to the child’s birth (at least 2 years of which were after age 14).		<i>See Nationality Chart 1 for retention requirements.</i>
Child Born Out of Wedlock to U.S. Citizen Father and Alien Mother <i>Child Legitimated or Acknowledged by Father</i>			
Date Relationship Established	Eligibility Requirements	<i>On or After Jan. 13, 1941 and Prior To Dec. 24, 1952</i>	<ul style="list-style-type: none"> <li>•The child was legitimated before age 21 under the laws of the father’s domicile;</li> <li>•The USC father resided in the United States or OLP for at least 10 years, at least 5 years of which were after age 14, at the time of the child’s birth; and</li> <li>•The child met retention requirements.</li> </ul>
<i>On or After Nov. 14, 1986</i>	<ul style="list-style-type: none"> <li>•The child was legitimated <b>OR</b> acknowledged before age 18* (legitimated under the laws of the child’s residence or domicile; or paternity acknowledged in writing under oath; or paternity established by court order);</li> <li>•A blood relationship between the child and father was established;</li> <li>•The father, unless deceased, has agreed in writing to provide financial support until child reaches age 18.</li> <li>•The child must be unmarried; and</li> <li>•The USC father was physically present in the United States or OLP for 5 years, at least 2 years of which were after age 14, at the time of the child’s birth.</li> </ul> <p><i>*A child age 18 or over on Nov. 14, 1986 could use the old law. (A child at least age 15, but under 18, could use either law (date of birth on or after Nov. 15, 1968).</i></p>	<i>On or After Dec. 24, 1952 and Prior To Nov. 14, 1986</i>	<ul style="list-style-type: none"> <li>•The child was legitimated before age 21 under the laws of the father’s domicile</li> <li>•The child was legitimated <b>PRIOR TO</b> Nov. 14, 1986;</li> <li>•The child must be unmarried;</li> <li>•The USC father was physically present in the United States or OLP for 10 years, at least 5 years of which were after age 14, at the time of the child’s birth; and</li> <li>•No residence required for the child to retain U.S. citizenship.</li> </ul>



Child Born Out of Wedlock to Two U.S. Citizen Parents

PERIOD IN WHICH CHILD WAS BORN	ELIGIBILITY REQUIREMENTS
	If both parents are U.S. citizens, the child may qualify under either parent. The child must meet the requirements for acquisition of citizenship under the mother <b>OR</b> the father; the child does not need to meet both requirements.
<b><i>On or After Dec. 24, 1952 and Prior To Nov. 14, 1986</i></b>	<b><i>Citizenship through U.S. Citizen Mother</i></b> <ul style="list-style-type: none"><li>•The mother had at least 1 year of continuous physical presence in the United States or OLP at any time prior to the child's birth.</li></ul> <b><i>Citizenship through U.S. Citizen Father</i></b> <ul style="list-style-type: none"><li>•The child was legitimated before age 21 under the laws of the father's domicile;</li><li>•The child was legitimated <b>PRIOR TO</b> Nov. 14, 1986;</li><li>•The child must be unmarried; and</li><li>•Either parent resided in the United States at any time prior to the child's birth.</li></ul>
<b><i>On or After Nov. 14, 1986 and Prior To June 12, 2017</i></b>	<b><i>Citizenship through U.S. Citizen Mother</i></b> <ul style="list-style-type: none"><li>•The mother had at least 1 year of continuous physical presence in the United States or OLP at any time prior to the child's birth.</li></ul> <b><i>Citizenship through U.S. Citizen Father</i></b> <ul style="list-style-type: none"><li>•The child was legitimated OR acknowledged before age 18* (legitimated under the laws of the child's residence or domicile; or paternity acknowledged in writing under oath; or paternity established by court order);</li><li>•A blood relationship between the child and father was established;</li><li>•The father, unless deceased, has agreed in writing to provide financial support until child reaches age 18;</li><li>•The child must be unmarried; and</li><li>•Either parent resided in the United States at any time prior to the child's birth.</li></ul> <p><i>*A child age 18 or over on Nov. 14, 1986 could use the old law. A child at least age 15, but under 18, could use either law (date of birth on or after Nov. 15, 1968).</i></p>
<b><i>On or After June 12, 2017</i></b>	<b><i>Citizenship through U.S. Citizen Father</i></b> <ul style="list-style-type: none"><li>•The child was legitimated OR acknowledged before age 18 (legitimated under the laws of the child's residence or domicile; or paternity acknowledged in writing under oath; or paternity established by court order);</li><li>•A blood relationship between child and father was established;</li><li>•The father, unless deceased, has agreed in writing to provide financial support until child reaches age 18;</li><li>•The child must be unmarried; and</li><li>•Either parent resided in the United States at any time prior to the child's birth.</li></ul>



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***Child Citizenship Protection  
Act Requirements:***

- 1) Parent is a USC by birth or naturalization,**
- 2) Child is under 18,**
- 3) Child is a LPR, and**
- 4) Child resides in U.S. in legal & physical custody of USC parent.**



***Effective Date: Age 18  
after Feb. 27, 2001***



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***Sessions v. Morales-Santana*, 582 U.S. \_\_, 137 S.Ct. 1678, 198 L.Ed. 420 (2017) (Ginsburg, J.):** Gender line in INA § 1409(c) -- which creates exception for unwed USC mother (but not father) to the physical-presence requirement for transmission of citizenship to child born abroad -- violates Fifth Amendment equal protection.

***Maslenjak v. United States*, 582 U.S. \_\_, 137 S. Ct. 1918, 198 L. Ed. 2d 460 (2017) (Kagan, J.):** To denaturalize citizen, government must prove person obtained citizenship illegally, and if the underlying illegality is a false statement to government officials, government must prove false statement influenced the naturalization process.

***Recent Supreme Court Citizenship Decisions***





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- 1. Issue is alienage; not citizenship***
- 2. Are you or either of your parents nationals or citizens of the United States?***
- 3. Terminate if not alien***
- 4. Use the charts***
- 5. Look in INA 300 et seq.***
- 6. Remember 2-27-01 (CCPA)***



***Practice Tips***